

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
BITWISE Communications, Inc.)
)
vs.) No. 09-0052
)
Illinois Bell Telephone)
Company)
)
Complaint as to over-billing)
and threatened termination of)
service.)

Chicago, Illinois
May 20, 2009

Met pursuant to notice at 10:00 a.m.

BEFORE :

Ms. Eve Moran, Administrative Law Judge

1 APPEARANCES:

2 MR. MARK L. GOLDSTEIN
3 3019 Province Circle
4 Mundelein, Illinois 60060
(847) 949-1340
Appearing for BITWISE (telephonically);

5 MR. MATTHEW L. HARVEY
6 160 North LaSalle Street
7 Suite C-800
Chicago, Illinois 60601
(312) 793-2877
Appearing for ICC Staff;

8
9 MR. JAMES A. HUTTENHOWER
225 West Randolph Street
Suite 25-D
10 Chicago, Illinois 60606
(312) 727-1444
11 Appearing for Illinois Bell;

12 MAYER BROWN, LLP, by
13 MR. MICHAEL T. SULLIVAN
71 South Wacker Drive
Chicago, Illinois 60606
14 (312) 782-0600
Appearing for Illinois Bell.

15
16
17
18
19
20
21 SULLIVAN REPORTING COMPANY, by
22 Julia C. White, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
None					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
ALJ Data Request Exhibit Nos. 1(a-e)	438	443

1 JUDGE MORAN: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Docket 09-0052.
3 This is BITWISE Communications, Inc., versus AT&T.
4 It is a complaint as to over-billing and threatened
5 termination of service.

6 May I have the appearances for the
7 record, please. I'll start with appearances by
8 telephone.

9 MR. GOLDSTEIN: On behalf of BITWISE
10 Communications, Inc., Mark L. Goldstein, 3019
11 Province Circle, Mundelein, Illinois 60060. My
12 telephone number is (847) 949-1340.

13 JUDGE MORAN: Okay. And in the room?

14 MR. HARVEY: Appearing for the Staff of the
15 Illinois Commerce Commission, Matthew L. Harvey,
16 160 North LaSalle Street, Suite C-800, Chicago,
17 Illinois 60601.

18 MR. HUTTENHOWER: Appearing on behalf of
19 Illinois Bell Telephone, James Huttenhower,
20 H-u-t-t-e-n-h-o-w-e-r, 225 West Randolph Street,
21 Suite 25-D, Chicago, Illinois 60606.

22 MR. SULLIVAN: Also appearing on behalf of

1 Illinois Bell Telephone Company, Michael T. Sullivan,
2 with the law firm of Mayer Brown, LLP, 71 South
3 Wacker Drive, Chicago, Illinois 60606. My telephone
4 number is (312) 782-0600.

5 JUDGE MORAN: Okay. Let the record reflect
6 that there are no other appearances.

7 MR. GOLDSTEIN: Judge, I would note for the
8 record that Michael Schuler is also on the phone from
9 BITWISE.

10 JUDGE MORAN: Okay. And that -- and
11 Mr. Schuler was a witness in this case; am I correct?

12 MR. GOLDSTEIN: Correct.

13 JUDGE MORAN: Okay. And does Staff have
14 anybody by telephone?

15 MR. HARVEY: No, your Honor.

16 JUDGE MORAN: Okay. Thank you.

17 I think the last time we were all
18 together, it was for a hearing on this matter. And
19 at the close of the hearing, I believe that I
20 directed the parties to work together and clear up
21 some of the ambiguity in these diagrams that set out
22 the specifics of the interconnections.

1 How have the parties worked on this?

2 Someone inform me.

3 MR. HUTTENHOWER: We have worked together and

4 agreed on five diagrams. I won't vouch for whether

5 they've reduced the confusion, but they -- we have

6 worked -- we have reached agreement on what the

7 diagrams should look like.

8 JUDGE MORAN: Okay. That's great.

9 And is that what was e-mailed to me by

10 Mr. Goldstein?

11 MR. HUTTENHOWER: Yes.

12 JUDGE MORAN: Okay.

13 MR. HUTTENHOWER: There were -- there were two

14 e-mails, which you probably figured out. One was

15 correcting the chart for Springfield, and -- so the

16 second chart on Springfield you received from

17 Mr. Goldstein is the one that should be --

18 JUDGE MORAN: Yeah, I disregarded the first --

19 MR. HUTTENHOWER: Okay.

20 JUDGE MORAN: -- because someone said there was

21 something wrong with it, and then I printed off the

22 second e-mail.

1 Now, are these both the same? I mean,
2 do they show the same thing?

3 MR. HUTTENHOWER: Yes. One was in a PDF
4 format, and one was in --

5 JUDGE MORAN: I see.

6 MR. HUTTENHOWER: -- a program, Vizio.

7 MR. HARVEY: Vizio, yes.

8 JUDGE MORAN: Okay. So which one do we want to
9 put into the record or do we want to put them both in
10 or --

11 MR. HARVEY: May I suggest the PDF, your Honor,
12 just because --

13 MR. SULLIVAN: Which is in your right hand.

14 JUDGE MORAN: This one?

15 MR. SULLIVAN: Yes.

16 MR. HARVEY: Yeah, the -- I think --

17 JUDGE MORAN: It's bigger for all of us.

18 MR. HARVEY: Well, I think, also, it will be
19 fileable.

20 JUDGE MORAN: Okay. And I believe this was ALJ
21 Data Request No. 1.

22 MR. HUTTENHOWER: Yes.

1 MR. SULLIVAN: I think that's fine.

2 MR. HUTTENHOWER: Yeah, that's fine. I don't

3 know if we would want -- and I don't think -- now,

4 the controversial thing is, should we agree on the

5 order of the pages in case anybody wanted to cite it

6 or not or should we just say, ALJ Exhibit 1, you

7 know, Champaign Chart?

8 JUDGE MORAN: Well, I only have a Springfield

9 chart.

10 MR. HARVEY: There's --

11 JUDGE MORAN: How am I --

12 MR. HARVEY: There's several. There are five

13 in total, your Honor.

14 MR. SULLIVAN: The first e-mail had five, but

15 the second e-mail only replaced one.

16 JUDGE MORAN: I see. Okay. So the second one

17 is only replacing the --

18 MR. SULLIVAN: Right.

19 JUDGE MORAN: -- Springfield one. So I'll have

20 to go back to the first e-mail.

21 MR. HUTTENHOWER: Yes, or we have --

22 JUDGE MORAN: Do you have copies?

1 MR. HUTTENHOWER: This is a PDF copy of the
2 five charts.

3 JUDGE MORAN: Great. Thank you, and these are
4 much prettier colors.

5 Okay. Great. Then I will have these
6 marked ALJ Data Request Exhibit No. 1. We can start
7 with Springfield being 1(a) -- small "a."

8 Is that good?

9 MR. HARVEY: That's good.

10 MR. SULLIVAN: Fine.

11 JUDGE MORAN: Then the Champaign would be
12 2(a) -- I mean -- I'm sorry -- 1(b). Peoria would be
13 1(c).

14 MR. HUTTENHOWER: There are two Peorias.

15 JUDGE MORAN: Oh.

16 MR. SULLIVAN: One is an Interconnection
17 Dispute, and one is an Internet Cross-Connect
18 Dispute.

19 JUDGE MORAN: Okay.

20 MR. HARVEY: How about --

21 JUDGE MORAN: 1(c) and 1(d). We'll make the
22 Cross-connect Dispute 1(d).

1 MR. SULLIVAN: Okay.

2 JUDGE MORAN: Then Quincy would be 1(e), and
3 then -- okay. This is the same thing as the
4 Springfield.

5 So it's 1(a) to (e); right?

6 MR. HUTTENHOWER: Yes.

7 JUDGE MORAN: Everybody agree to that?

8 Okay. Fine.

9 (Whereupon, ALJ Data Request
10 Exhibit Nos. 1(a-e) was marked
11 for identification.)

12 MR. MICHAEL SCHULER: I'm sorry. This is
13 Michael Schuler. I didn't hear.

14 The Internet one is going to be 1(c)
15 or 1(d)? I didn't get the Peoria one.

16 JUDGE MORAN: Okay.

17 MR. SULLIVAN: Mike, the Interconnection
18 Dispute is 1(c). The Internet Cross-Connect Dispute
19 is 1(d).

20 JUDGE MORAN: Correct.

21 MR. MICHAEL SCHULER: Okay. Thank you.

22 JUDGE MORAN: Okay. Now, I guess my other

1 question is, how does the testimony that is -- that
2 was educed at hearing relate to these diagrams?

3 MR. GOLDSTEIN: Judge, that was exactly the
4 point that I was trying to raise with Mr. Huttenhower
5 during our various discussions. It just seems to me
6 that there should be some kind of explanation --

7 JUDGE MORAN: Well, of course.

8 MR. GOLDSTEIN: -- provided along with the
9 diagrams, and it's up to your Honor to tell us how
10 you would like that discussion provided in the
11 record.

12 JUDGE MORAN: I guess it would have to come in
13 in the form of testimony or an affidavit.

14 MR. GOLDSTEIN: All right.

15 JUDGE MORAN: Now, who worked on this and who
16 knows what all this is?

17 MR. GOLDSTEIN: These diagrams were prepared,
18 essentially, by Mr. Schuler.

19 JUDGE MORAN: Okay.

20 MR. GOLDSTEIN: The changes that were made to
21 the diagrams to make them, you know, agreeable to
22 both the AT&T and the BITWISE were -- well, the

1 changes were provided by Mr. Huttenhower and agreed
2 to by BITWISE. So I guess we could probably come up
3 with some kind of written document that would
4 describe each of the diagrams, and --

5 JUDGE MORAN: Absolutely.

6 MR. GOLDSTEIN: -- that would --

7 JUDGE MORAN: That's what -- that's what has to
8 be done. So I kind of thought that would be
9 together --

10 MR. GOLDSTEIN: And then we'd have to have an
11 affidavit -- an affidavit form at the end to say
12 that, you know, it's true and correct and -- let's go
13 with that.

14 JUDGE MORAN: Yeah, especially since you've
15 both worked on it and it's not -- it would -- it
16 reflects the best of -- it gives -- it's presented
17 with the knowledge of the parties as to what exists
18 in these systems. So what is needed is just an
19 explanation of what each of these things show.

20 MR. GOLDSTEIN: I think we would be happy to
21 provide that, Judge.

22 JUDGE MORAN: Okay. Great.

1 And when would that be done?

2 MR. GOLDSTEIN: Mr. Schuler, do you have any

3 idea how long it would take you to provide that

4 information in written form?

5 MR. MICHAEL SCHULER: I would guess I could

6 have it done by next week -- probably the end of next

7 week.

8 MR. GOLDSTEIN: How about a week from Friday,

9 Judge?

10 JUDGE MORAN: Okay. And then you will give

11 a -- give a copy to AT&T?

12 MR. GOLDSTEIN: Absolutely.

13 JUDGE MORAN: Okay. And then you guys will --

14 MR. GOLDSTEIN: Yeah, the documents that we

15 will --

16 JUDGE MORAN: -- comment on it --

17 MR. GOLDSTEIN: -- provide --

18 JUDGE MORAN: -- or whatever --

19 MR. GOLDSTEIN: I imagine the document --

20 JUDGE MORAN: -- or sign off on it.

21 MR. GOLDSTEIN: The document we will provide,

22 Judge, will be an agreed document between the

1 parties.

2 JUDGE MORAN: Good. Good. Good.

3 And then how are we going to work

4 Staff into this, Mr. Harvey?

5 MR. HARVEY: Well --

6 MR. GOLDSTEIN: Well, we'll copy them,

7 certainly.

8 MR. HARVEY: Yeah, I mean, we are fine with

9 being copied on this, your Honor, because we are the

10 one party in this matter that doesn't really have any

11 specific knowledge of what the network looks like out

12 there.

13 JUDGE MORAN: Right. Right.

14 MR. HARVEY: It's not our network.

15 JUDGE MORAN: I understand.

16 But in terms of -- let's go off the

17 record for a minute.

18 (Whereupon, a discussion was had

19 off the record.)

20 JUDGE MORAN: Let's go back on the record.

21 There will be written supporting

22 explanations of each of the ALJ Data Request Exhibit

1 Nos. 1(a) through (e), which I've marked for
2 identification and will be admitted as of today's
3 date.

4 (Whereupon, ALJ Data Request
5 Exhibit Nos. 1(a-e) was
6 admitted into evidence.)

7 JUDGE MORAN: Those written supporting
8 explanations will come in by joint affidavit on
9 Wednesday, June 10th. In the period immediately
10 thereafter, the parties will each consult with their
11 witnesses to see if any additional testimony,
12 affidavits or other type of evidence needs to be put
13 in. A report on that will be given at a status
14 hearing held on June 24th.

15 Is 10:00 a.m. good for everybody?

16 MR. HARVEY: That's fine, your Honor.

17 JUDGE MORAN: Do you want it in the afternoon?
18 I don't care.

19 MR. HUTTENHOWER: I have a doctor's appointment
20 at, like, 8:30. So maybe if we can meet at 10:15 or
21 10:30.

22 JUDGE MORAN: Why don't we --

1 MR. GOLDSTEIN: Why don't we make it 11:00, to
2 make it easy.

3 JUDGE MORAN: Why don't we do it at 10:30 or
4 11:00?

5 MR. HUTTENHOWER: That's fine.

6 JUDGE MORAN: 10:30 or 11:00?

7 MR. GOLDSTEIN: 11:00.

8 MR. HARVEY: 11:00 --

9 JUDGE MORAN: Fine.

10 MR. HARVEY: -- is fine.

11 JUDGE MORAN: Perfect.

12 I think the parties fully understand
13 what is required, and -- so we're just going to
14 continue this matter to June 24th at the hour of
15 11:00 a.m.

16 MR. HARVEY: Thank you very much, your Honor.

17 MR. SULLIVAN: Thank you.

18 MR. GOLDSTEIN: Thank you.

19 JUDGE MORAN: Thank you.

20 (Whereupon, the above-entitled
21 matter was continued to
22 June 24, 2009, at 11:00 a.m.)